No. 94-1856

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IN THE

Supreme Court of the United States

October Term, 1994

JOSEPH CANDELA,

Petitioner,

against

DARRYL J. WOODS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the decision of this Court in *Heck v Humphrey* require district courts, in determining the accrual date of Section 1983 actions, to evaluate on a case-by-case basis whether the success of the federal claims will necessarily invalidate any outstanding state criminal conviction?

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BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Summary of the Argument

The Court of Appeals answered the question presented in the affirmative. The reasoning of the Second Circuit is a correct application of this Court's holding in *Heck v Humphrey,* 129 L Ed 2d 383 (1994).

Statement of the Case

On September 25, 1989, while on patrol in the City of Newburgh, New York, petitioner, a New York state trooper, stopped respondent's vehicle. A vehicle with a similar description had been seen near the scene of two recent robberies and a recent larceny. Other than tinted windows, there was nothing wrong with respondent's vehicle and petitioner had no reason to believe that either respondent or his passenger had committed or were about to commit a crime.

Petitioner asked respondent if there were any weapons in the vehicle and respondent replied that he had a nightstick under the seat. Petitioner searched the vehicle and found several items that matched the description of articles used in the robberies, an air rifle, a green cap, and a black cloth with two holes cut in it. Petitioner arrested respondent and shortly thereafter the items seized were offered to an Orange County Grand Jury and an indictment was handed up charging respondent with the crimes of robbery in the first degree and criminal possession of a weapon in the fourth degree.

Respondent filed an omnibus motion which sought an order suppressing the physical evidence found in respondent's vehicle as well as respondent's statements made to the police. The Orange County Court held a hearing on the motion and

determined that respondent's constitutional rights had not been violated and denied suppression. The items and respondent's statement were subsequently received in evidence at respondent's jury trial and respondent was found guilty as charged. On November 15, 1990, respondent was sentenced to an indeterminate term of imprisonment of 12½ to 25 years.

Respondent appealed from the judgment of his conviction to the Supreme Court of the State of New York, Appellate Division, Second Department, and on January 19, 1993, that court reversed the judgment of conviction and dismissed the indictment. *People v Woods,* 189 AD2d 838 (2nd Dept. 1993). The Appellate Division found that petitioner did not have reasonable suspicion that the occupants of respondent's vehicle were involved in criminal activity, that the intrusiveness of petitioner's conduct exceeded that which is permissible during a normal traffic stop, that petitioner had no justification for detaining respondent to question him about matters unrelated to the traffic violation, and that the People failed to meet their burden of proving the voluntariness of respondent's statement and purported oral consent to the search of the vehicle.

In his complaint against petitioner filed in the District Court on May 6, 1993, respondent claimed, *inter alia,* that petitioner violated his Fourth Amendment right to be free from unreasonable searches and seizures without probable cause and his Fifth Amendment right remain silent. Petitioner moved to dismiss the claims pursuant to F.R.C.P. Rule 12 (b) (6) on the ground that they were untimely and barred by the three-year statute of limitations. In opposition to the motion, respondent argued that although the police conduct which gave rise to the Fourth and Fifth Amendment violations occurred in September, 1989, his civil rights claims should not be barred since the criminal court's denial of suppression was not reversed until

January, 1993. The District Court granted petitioner's motion in an opinion dated June 25, 1993. *See* Appendix C to Petition, p 11a.[1] By Decision dated January 6, 1994, the Court of Appeals affirmed. *See* Appendix B to Petition, p 4a.[2]

Respondent filed a petition for writ of certiorari in this Court. Subsequent to the filing of the petition, this Court decided *Heck v Humphrey,* 129 L Ed 2d 383 (1994). In *Heck,* this Court held that "a §1983 cause of action for damages attributable to an unconstitutional conviction or sentence does not accrue until the conviction or sentence has been invalidated." *Heck,* 129 L Ed 2d at 396.

In October, 1994, this Court granted respondent's petition, and remanded to the Second Circuit "for further consideration in light of *Heck." Woods v Candela,* 115 S. Ct. 44 (1994).

On February 9, 1995, the Second Circuit reversed the judgment of the District Court and remanded for further proceedings. *See* Appendix A to Petition, p 1a.[3] The Court of Appeals noted that the *Heck* Court had provided an exception to the accrual rule for §1983 actions: an action based upon an allegedly unconstitutional search that "would not *necessarily* imply that the plaintiff's conviction was unlawful" would accrue without regard to the invalidation of the conviction. Appendix

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[1]This decision was reported at *Woods v Candela,* 825 F. Supp. 43 (S.D.N.Y. 1993).

[2]This decision was reported at *Woods v Candela,* 13 F.3d 574 (2nd Cir. 1994)

[3]This decision was reported at *Woods v Candela,* 47 F.3d 546 (2nd Cir. 1995) (*per curiam)*

A, p 3a, *quoting Heck*, 129 L Ed 2d at 394 n 7. The Court of Appeals then reviewed the decision of the New York Appellate Division dismissing respondent's indictment, and determined that respondent's present constitutional claims are the same upon which the Appellate Division relied to invalidate his conviction and thus "necessarily imply that his conviction was unlawful". Appendix A, p 3a. The Second Circuit concluded that *Heck* therefore precluded respondent from bringing his action prior to the invalidation of his conviction by the Appellate Division. Appendix A, p 3a.

REASONS FOR DENYING THE WRIT

The Second Circuit's decision correctly applied the principles set forth in *Heck v Humphrey*.

In his petition to this Court, Candela argues that the decision of the Court of Appeals is in conflict with *Heck*. The determination of the Second Circuit, however, quite logically flows from application of the holding and principles of *Heck*. An even cursory reading of petitioner's argument reveals that what petitioner actually is seeking is a rehearing of *Heck* itself.

Petitioner frivolously claims that respondent's §1983 action falls within the exception provided by the *Heck* Court in footnote 7. But petitioner never explains *how* this particular illegal search did not "necessarily imply that the [respondent's] conviction was unlawful". Petitioner simply ignores the ineluctable conclusions of the New York Appellate Division and the United States Second Circuit Court of Appeals that the unconstitutionality of this search invalidated the criminal conviction—indeed, the determination that this particular search was illegal could have led to no other conclusion. Put another way, petitioner never comes to terms with the rationale underlying

Heck: if the determination in a federal cause of action that a state search was unconstitutional necessarily invalidates the conviction produced by that same search, the federal cause of action does not accrue until the conviction is overturned. Otherwise, what would have happened in this case is that a federal court would have invalidated the search *prior* to the invalidation of respondent's conviction. This is precisely the turn of events which this Court decided to prevent by its holding in *Heck*.

At page 8 of his petition, Candela contends that "it is apparent that this Court [in *Heck*] intended to establish an across-the-board exception for all unreasonable search cases, not the case-by-case application employed by the court of appeals . . . [and that] . . . [a]nything less will involve the district courts in a premature evaluation of the validity of the underlying claim". This frivolous contention simply ignores the plain language of *Heck*:

> We hold that, in order to recover damages for allegedly unconstitutional conviction or imprisonment, or for other harm caused by actions whose unlawfulness would render a conviction or sentence invalid, a §1983 plaintiff must prove that the conviction or sentence has been reversed on direct appeal . . . A claim for damages bearing that relationship to a conviction or sentence that has *not* been so invalidated is not cognizable under §1983. Thus, when a state prisoner seeks damages in a §1983 suit, the district court must consider whether a judgment in favor of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if it would, the complaint must be dismissed unless the plaintiff can demonstrate that the conviction or sentence has already been invalidated. But if the district court determines that the plaintiff's action, even if successful,

> will *not* demonstrate the invalidity of any outstanding criminal judgment against the plaintiff, the action should be allowed to proceed . . .

Heck, 129 L Ed 2d at 394. Petitioner is arguing that the Second Circuit should not have done precisely what this Court told it to do. The petition is a poorly disguised request that this Court overrule *Heck v Humphrey*.

Conclusion

For the forgoing reasons this petition for a writ of certiorari should be denied.

Dated: Goshen, New York
June 1, 1995

Respectfully submitted by

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